

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

MISSOURI FEDERATION OF TEACHERS,)	
AFT, AFL-CIO,)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 92-015
)	
SPRINGFIELD R-XII SCHOOL DISTRICT,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by Missouri Federation of Teachers, AFT, AFL-CIO of a petition for certification as public employee representative for all security and safety officers employed by the Springfield R-XII School District. A hearing was held on June 2, 1992, in Springfield, Missouri, at which representatives of the union and the district were present. The case was heard by State Board of Mediation Chairman Mary L. Gant, Employer Member Milton O. Talent, and Employee Member Donald N. Kelly. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo 1986. At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Springfield School District employs about 2,500 full time employees, 1,600 of whom are certificated personnel (teachers) with the remainder being non-certificated personnel (support staff). The support staff employees are divided into the following six different groups: 1) clericals, 2) custodians, 3) cafeteria workers, 4) bus drivers, 5)

aides (classroom and lunchroom) and 6) public safety. The district engages in the meet and confer process with several of the foregoing groups. The teachers are represented by two teacher associations, to-wit: the Missouri National Education Association (MNEA) and the Missouri State Teachers Association (MSTA). These associations also represent a custodial bargaining unit, a clerical bargaining unit, and an educational support bargaining unit. At present, the Missouri Federation of Teachers (MFT) does not represent any employees in the Springfield R-XII School District.

Twelve people work in the district's public safety department. The director of the department is Dennis Lewis; the department secretary is Wanda Henry; the department investigator is Don Deckard; and the remaining nine employees are security officers. Two of the security officers are assigned to Ozark Technical College, two security officers do not have a fixed, permanent assignment and five security officers are assigned to the district's high schools. Lewis supervises each of the five security officers at the high schools who are supervised by the high school principal. Lewis, Henry, Deckard and five of the security officers work year round while the remaining security officers just work during the school year.

The public safety department is responsible for the physical safety and security of all district staff, students and visitors on the school grounds. It is also responsible for safeguarding district property, equipment and supplies. The department investigates all accidents which involve students and staff. It routinely reviews allegations by parents of improper corporal punishment imposed on students. Additionally, when necessary, the department conducts internal investigations.

The security officers primary job function is to provide security and enforce discipline during or after school hours. Some examples of what a security officer may encounter performing their job are assaults, thefts, vandalism and drug and alcohol problems.

Whenever any of the foregoing incidents occur at school, the initial investigation is performed by the on-site security officers. If a follow up investigation is necessary, that is handled by the department's investigator. A report on the occurrence is prepared and sent to the department's office. If the incident involves a juvenile, the report is forwarded to the Greene County Juvenile Office which accepts the report in lieu of a police report.

When the district's public safety department was formed 30 years ago, all of the department's security officers had a background in law enforcement. Over time though, a law enforcement background has become a less important factor in the district's hiring process. At present, having a law enforcement background or being a commissioned law enforcement officer is not a requirement for the job of security officer. Four of the nine security officers are commissioned law enforcement officers. While these four security officers possess the power of arrest, the School Board has directed them to not exercise it. Thus, security officers are not required, as part of their job, to make arrests. Instead, when necessary, security officers are to simply detain suspects until police arrive on the scene. Security officers do not carry guns.

The investigator, as the name implies, acts as the department's follow-up investigatory person for campus crime, significant accidental injuries and significant incidents. As an example, if a computer was stolen from a high school, the security officer assigned to that school would conduct the initial investigation and the investigator would conduct a follow-up investigation. After completing such investigations, the investigator prepares case reports which are submitted up the district's chain of command. The investigator also provides in-service training programs for the department. He also conducts the internal theft investigations.

The incumbent investigator, Don Deckard, is a 20-year employee who assumed that title at the start of this past school year. Prior to that, Deckard was a security officer. Deckard is paid on an hourly basis like the other security officers but he

receives \$3,000.00 more in salary per year than the other year round security officers. As the investigator, Deckard has not hired, fired or disciplined employees, recommended pay increases, evaluated employees, authorized overtime, made job assignments or approved absences. When the director of the department (Lewis) is attending conferences or is on vacation, he leaves instructions for Deckard to carry out in his absence. Lewis has told Deckard to do "whatever needs to be done" in the department in this absence. If a serious matter came to his attention while Lewis was absent, he would report the matter to Lewis' supervisor, Deputy Superintendent Joyce Dana.

CONCLUSIONS OF LAW

Missouri Federation of Teachers, AFT, AFL-CIO, petitioned to be certified as public employee representative of a bargaining unit comprised of all security and safety officers employed by the Springfield R-XII School District. The district urges us to dismiss the union's election petition for the following reasons. First, the district argues that the security officers should be considered to be police officers under Section 105.510. If they are, then they are excluded from the statute's coverage and this Board's jurisdiction. Second, even if the Board finds that the security officers do not qualify as "police" for purposes of Section 105.510, the district asserts that the Board should nevertheless exclude them from being represented by this union on the grounds that security officers "should not be represented by a union that generally represents employees against whom those rules and regulations could be enforced." Finally, in the alternative, the district submits that the investigator position should be excluded from any proposed bargaining unit on the grounds he is a substitute supervisor in the district's public safety department.

Each of the foregoing contentions is addressed below.

Attention is focused first on the threshold issue of whether the security officers are "police" within the meaning of Section 105.510. If the security officers are "police",

they are excluded from the coverage of the Missouri Public Sector Labor Law and this Board lacks jurisdiction over them. However, if the security officers are not "police", they are not excluded from the statute's coverage and the Board's jurisdiction.

In making this call, we look to the statute itself. Section 105.510 provides as follows:

Employees, except police, deputy sheriffs, Missouri State Highway Patrolmen, Missouri National Guard, all teachers of all Missouri school, colleges and universities, of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representation of their own choosing (emphasis added).

This section grants certain rights to those public employees who are not excluded from the statute's coverage. The exclusions pertinent herein are "police, deputy sheriffs, Missouri State Highway Patrolmen (and) Missouri National Guard." While all these categories involve law enforcement personnel, it is noteworthy that the legislature did not specifically exclude law enforcement employees, per se. Additionally, it is also specifically noted that school district security officers are not listed as an exclusion. In the absence of a specific exclusion, the inference is that the classification or category of employee is included. Thus, the inference is that school district security officers are included within the statute's coverage unless the record indicates they fall into any of the so-called law enforcement exclusions noted above. Inasmuch as the district has limited their contention in this regard to just the category of "police", we will do likewise.

This is not the first time the Board has been presented with the question of whether school district security officers are "police". In School District of Kansas City, Public Case No. 99 (SBM, 1976), the Board addressed this same question and held that security officers were not "police" within the meaning of the statute.

The district ignores the aforementioned decision and urges us to reach a contrary result here based on Jackson County v. Missouri State Board of Mediation, 690

S.W.2d 400 (Mo. 1985). In that case, the Missouri Supreme Court addressed the question of whether Jackson County's correction officers were "police" under Section 105.510. The court found that the correction officers therein were not "police" because they did not perform duties comparable to those performed by police and deputy sheriffs. In so finding, the court stated:

We think this legislative purpose can best be effectuated if the exclusion provision is interpreted to encompass those persons engaged in law enforcement who, regardless of job title, perform duties and functions substantially comparable to those performed by police and deputy sheriffs. 690 S.W.2d at 402.

It is evident from the foregoing that the job title itself is not determinative. Instead, it is the duties of the employees involved, not their job title, that is controlling in determining whether said employees are excluded as "police" under Section 105.510.

In our view, there is no question that the security officers in the Springfield R-XII School District perform some duties comparable to those performed by "police". For example, they enforce (district) rules, investigate violations of same, respond to calls for assistance and write follow-up reports. Be that as it may, these job duties are not enough to qualify them as "police". It is well known that "police" carry firearms and can enforce the law with the power of arrest. The security officers at issue here do not carry firearms. While some of the security officers do have the power of arrest as a result of their law enforcement background, they have been specifically instructed by the district to refrain from exercising that authority. Thus, it is clear that they are not required as part of their job to arrest. Instead, when necessary, they simply detain suspects for the police. That being the case, we are persuaded that the security officers involved here are not "police" within the meaning of Section 105.510. In our opinion, this holding is

not only consistent with our previous decision in Kansas City School District, but also with Jackson County.

Having found that the security officers are not "police", the question remains whether a unit composed of same constitutes an appropriate bargaining unit. An appropriate bargaining unit is defined by Section 105.500(1) RSMo 1986 as:

A unit of employees at any plant or installation or in a craft or a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

In this case, the district does not expressly challenge the appropriateness of a bargaining unit composed of all district security officers. That being so, we are satisfied that in the context of this case, a unit of security officers constitutes an appropriate bargaining unit within the meaning of the Missouri Public Sector Labor Law.

Having so found, we now turn to the district's contention that as a matter of public policy, the MFT should not be allowed to represent security guards. This contention is based on the premise that there is an inherent conflict for an organization, such as MFT, to represent both security guards and other employees against whom those rules may be enforced. We reject this contention for the following reasons. First and foremost, even if we were to accept the district's premise that a potential conflict exist for a union to represent security guards and other public employees at the same employer, such a situation does not exist here. This is because the MFT does not presently represent any employees in the Springfield R-XII School District. All currently represented employees in the district are represented by organizations other than the MFT. Consequently, no conflict presently exists. Second, even if the MFT did currently represent employees in the Springfield R-XII School District, we would not include the security officers in an existing bargaining unit with other employees. Instead, if the MFT represented any other district employees and sought the instant unit of security officers, we would simply create a separate and distinct bargaining unit for the security officers alone. Third, we cannot overlook the obvious fact that the MFT presently represents

security guards in the Kansas City and St. Louis School districts.¹ In fact, this Board certified the guard unit in Kansas City in 1976.² In the Kansas City School District decision previously cited we considered, and rejected, the same contention as is raised here. Given the foregoing, we believe that the security officers are entitled to be represented by an organization of their own choice.

The final issue here is whether the investigator should be included in the bargaining unit found appropriate. The district contends he should not be included based on the supervisory status, while the union disputes this assertion.

Although supervisors are not specifically excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion. See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d (Mo.App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976). This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise. Since the district contends that the investigator is a supervisor, it is necessary for us to determine if such is, in fact, the case.

In making this decision, this Board has historically considered the following factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.
- (3) The number of employees supervised, and the number of actual persons exercising greater, similar or lesser authority over the same employees.

¹ Transcript, p. 10.

² Kansas City School District, supra.

- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees.
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.³

We will apply these factors here as well. Not all of these criteria need to be present to be found supervisory. Rather, in each case the inquiry is whether these criteria are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.

Applying these criteria to the investigator, we conclude that on balance he does not meet this supervisory test. Our analysis follows.

To begin with, it is clear that Deckard has not recommended any of the procedures listed in factor (1) above. Specifically, he has not hired, fired, or disciplined anyone, promoted anyone or recommended a pay increase, evaluated anyone or transferred anyone.

The only time Deckard is conceivably in charge of the department is when department head Lewis attends a conference or is on vacation. Even on those occasions though, Deckard's exercise of independent judgment is limited because Lewis leaves instructions for Deckard to carry out in his absence. If a serious matter came to Deckard's attention while Lewis was gone, Deckard would simply report the matter to Lewis' supervisor (Dana) rather than dealing with it himself.

With regard to the level of pay, it is clear that Deckard makes \$3,000.00 more in salary per year than the year round security officers. In our view, this money can easily be viewed as extra compensation for his investigatory duties.

³ See, for example, City of Sikeston, Case No. R 87-012 (SBM 1987).

We are well aware that the district considers Deckard to be in charge of the department when Lewis is gone. Be that as it may, this does not make him a supervisor. On those occasions when Lewis is gone, we are satisfied that Deckard supervises the work activity performed in the department -- not the employees themselves. We therefore hold that Deckard does not exercise sufficient supervisory authority in such combination and degree to make him a supervisor.

DECISION

It is the decision of the State Board of Mediation that the security officers are not "police" within the meaning of Section 105.510; that a unit of security and safety officers is an appropriate bargaining unit; that the MFT is not precluded from representing a unit of security guards; and that Deckard is not a supervisory employee so he is therefore included in the bargaining unit found appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they

desire to be represented for the purpose of exclusive recognition by Missouri Federation of Teachers, AFT, AFL-CIO.

It is hereby ordered that the city shall submit to the Chairman of the State Board of Mediation, as well as to Missouri Federation of Teachers, within fourteen (14) days from the date of receipt of this decision, an alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 10th day of August, 1992

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant
Mary L. Gant
Chairman

/s/ Milton O. Talent
Milton O. Talent
Employer Member

/s/ Donald N. Kelly
Donald N. Kelly
Employee Member